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The Twilight Zone of City Zoning Regulations

City Council Can Move to Better Regulate Development

by Matthew Friesen and Christopher Leo

City Council will soon vote on a series of changes to zoning regulations, changes that will require many new businesses to apply for a rezoning before launching a new commercial outlet in industrial areas. The proposed changes come about partly in response to the disastrous growth of big-box stores around Polo Park, a phenomenon that has resulted in horrible traffic congestion, while the City has been left to pick up a bill of \$3 million to change nearby roads.

The proposed changes will provide an interim measure to address the pressing issue of commercial development in industrial districts, but do not constitute the fundamental changes required to achieve that goal, and to stop developers from off-loading large portions of their infrastructure costs onto residential taxpayers. Council should approve these changes and support the Department of Planning, Property and Development in their efforts to move toward a more financially responsible and sustainable urban environment.

Development Charges

Any development or redevelopment project will have consequences for the urban environment, ranging from a significant shift in regional traffic patterns within the municipality, to a small increase in the presence of pedestrians on a given street at a given time. Development charges (DCs) are one tool used to address the impact developments have on their infrastructure.

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In Winnipeg, development charges are officially referred to as “servicing conditions.” As the name suggests, these charges mostly have to do with servicing infrastructure – sewer, water, land drainage and transportation facilities. DCs are levied as a condition for the granting of a development permit. They are assessed based on how much new infrastructure, or upgrading of existing infrastructure, a development necessitates,¹ and reflect the belief that developers should be held responsible financially for the impact their developments have on municipal infrastructure.

In theory, the idea that developers should cover the cost to the City of servicing a new development is straightforward. In practice, it is anything but. Thus, as with most aspects of urban development in Winnipeg, development charges are determined in large part through negotiations between developers and the City.

No Standard

There is no standard legal formula dictating which specific sorts of servicing infrastructure are subject to assessment, nor is there a clear standard for what portion of the total impact a developer is held responsible. For instance, a new shopping mall in a suburban district will obviously have traffic consequences for the immediate area. But it is also possible that significant problems will be created at an intersection or on a feeder route five miles away. In Winnipeg, these issues are negotiated and resolved on a case-by-case basis.

The process typically begins with the City asking the developer to hire a consulting firm to do a traffic study outlining the expected impact a development will have. If the City agrees with this initial assessment, development charges will be levied in line with what is suggested by the traffic study. However, if the City does not agree with the initial assessment, another agreement must be worked out before a development permit is granted.² (The traffic study may find that a developer’s infrastructure obligations would be extensive enough that the project would no longer be profitable, in which case the developer would likely retract the proposal.)

The legal mechanism by which the City may officially assess the need for upgrades or new infrastructure – and charge developers with covering those costs – lies within the rezoning process.³

Rezoning requires the development proposal to pass through various committees as well as a vote by City Council. If successful, the proposal is not simply granted a development permit, but a by-law amendment is passed. This is a much more time consuming and intensive process than that which confronts proposals that do not require rezoning, and intuitively it appears that

his approach keeps major shifts in primary uses in an area within the scope of public control. Anyone can see the value in, for example, allowing Winnipeg residents a say in whether or not Schneider’s puts a processing plant in the middle of their neighbourhood.

Rezoning is a rigorous and public process – it is perhaps the biggest club the city can use to try to force the hand of developers on issues that have the potential to seriously affect quality of life in Winnipeg. From this perspective, it might seem logical that development charges – which are meant to address changes in infrastructure needs – should be closely associated with rezoning.

However, development charges are not merely *associated* with rezoning. They are intimately tied together. Officials at the Department of Planning, Property and Development cannot levy charges as part of a development agreement *unless* that agreement is the result of the public hearings and committee and Council deliberations that constitute the rezoning process. In Winnipeg, when a development proposal moves through the rezoning process, it triggers the City’s authority to hold developers legally responsible for the impact of their developments. In the event that a development is approved without going through the rezoning process, any infrastructure upgrade needs resulting from that development will be the responsibility of the City.⁴

Any proposed project that requires rezoning potentially entails significant consequences for Winnipeg’s infrastructure, and so ought to have its impacts assessed. Yet this is not to say that the system now in place holds developers accountable *in practice*. The City relies heavily on its zoning formula both to ensure rational urban form, as well as adequate infrastructure capacity.

Winnipeg’s zoning formula is not a fine screen, and nowhere near well-enough honed to infrastructure needs. Industrial districts are tremendously permissive, such that an industrial sub-category permitting low-traffic warehousing at the same time permits high-traffic “big box” retail operations.⁵ Similarly, commercial zoning districts take little account of infrastructure needs.

The issue is not that certain industrial districts explicitly permit both warehouses and “big box” operations under the same sub-category. Rather, there is a very real lack of definition within the zoning by-law itself, and this has created several problems for zoning administrators charged with reviewing applications for development permits. First, many of the use classifications listed in the zoning code lack specific definition, and therefore a certain amount of “creative interpretation” is required in the development permit approval process. For example, when Wal-Mart wanted to redevelop a site at Sargent and Empress to open

a new outlet, it was faced with an existing zoning sub-category that allows for a host of uses from manufacturing of farm implements to luggage sales.⁶

A Wal-Mart store incorporates several permitted uses into a cohesive whole. In common-sense terms, Wal-Mart is a department store and, one might think, should be classified as such. However, the term “department store” is nowhere defined by the by-law itself.

In the end, Wal-Mart was granted the permit without a rezoning. Officials saw little chance of being able to enforce a rezoning at that particular site, because it had previously allowed entities of a very similar nature, such as Revy Home and Garden and Home Depot, to develop in the area on industrially zoned land. In fact, certain zoning officials consider the precedent to be so solidified that – save a rewriting of the zoning by-law – use classifications will be only loosely applied to Wal-Marts and similar retail operations throughout Winnipeg.⁷

One need only look at the size of a Wal-Mart parking lot to get a sense of the traffic it is generating. If the surrounding area’s infrastructure was designed to accommodate traffic levels much lower than what a “big box” outlet will generate, the consequences of that development will certainly be serious. Yet many such commercial operations are being developed without a rezoning, and therefore without servicing conditions.

Polo Park

The Polo Park area illustrates the traffic nightmare that can result from a massive lack of infrastructure upgrades. Much of the area is zoned for industrial uses, though over time the general area has shifted from one of industrial concentration to one of commercial concentration. Given that the City is unable to levy development charges on projects that do not go through rezoning, the permissiveness of industrial zoning districts in the zoning code has meant that most of the redevelopment to commercial use around Polo Park has gone ahead without developers covering the cost of needed infrastructure upgrades. An area that once had infrastructure adequate for industrial operations now must deal with high-volume traffic generated by a strong commercial presence with roughly the same facilities. This congestion is hurting the industrial operations that remain, and also creates an unsafe environment for motorists (A consulting firm identified nine locations within

the Polo Park area as having a “collision problem.”). Overall, the area requires over three million dollars worth of transportation infrastructure improvements.⁸

The proposed text amendment currently making its way through the channels of the city government would have most retail uses changed from being classified permitted to *not permitted* in industrially zoned areas. Uses such as “florist,” “gift store” and luggage sales simply do not fit with the intent of most of the nine industrial zoning categories.⁹ In specific regard to Winnipeg’s DC regime, these changes remove uses from industrial districts that

have a tendency to generate more traffic than other permitted industrial uses. The proposal, therefore, tightens the zoning code, making it more sensitive to infrastructure requirements, and giving City officials more leverage over developers to ensure that impacts are dealt with. Under this arrangement a developer wanting to put a Costco on a site zoned “M2” will need to rezone to make it happen, and the City will thus be able to scrutinize the plan and have developers financially cover needed infrastructure upgrades.

Some caution is needed in thinking this way about the proposal. For even though it is fairly significant measure (removing the bulk of retail uses from an entire zoning district is no small change), in a sense it only addresses the DC issue indirectly. The chief objectives of the text amendment are to protect Winnipeg’s industrial land base and promote downtown commercial development. It is by virtue of DC authority being tied to rezoning processes that the proposal makes headway on the DC problem in Winnipeg. As was discussed above, big box stores are not specifically permitted in industrial districts under the current zoning code. Rather, applications for big box developments latch on to other uses that *are* specifically permitted and might have a loose relevance to the planned store. The text amendment under consideration here removes those uses that might be used for big box development approval (sporting goods sales, for instance, that might be used to classify a Wal-Mart that has a large sporting goods section, but is not, strictly speaking, a sporting goods store). Thus the infrastructure impacts of big box developments in industrial areas would be implicitly recognized by the zoning code.

The current proposal wisely bills itself as a *short-term* measure to deal with both land-use and develop-

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ment charge concerns. This is particularly important in the case of the DC regime. Tightening the zoning code to make it more responsive to infrastructure needs is one way to approach the real world ineffectiveness of Winnipeg's DC regime as it stands now.¹⁰ To do this comprehensively would necessitate grouping uses that generate similar infrastructure demands, and there is a potential here that reorienting the zoning code to infrastructure would take away from its function as protector of orderly development. To combine the two objectives into a single zoning code would likely result in a regulatory document so complex that it becomes unworkable.

City officials must keep in mind their plans to effect a new urban vision whereby Winnipeg's tendency towards sprawl is reversed. A more restrictive zoning code goes against the general stand in Winnipeg's municipal community that relatively permissive land-use regulations encourages mixed uses in particular geographical areas as well as densification, which can contribute to the sustainability of those areas.¹¹ *Plan Winnipeg 2020 Vision* certainly outlines a commitment to both the diversification and densification of residential and commercial areas. These objectives are admirable, and the City needs to ensure that its regulations do not inhibit their realization. So a zoning code that is – by virtue of being sensitive to infrastructure needs – more complex, with more subcategories, would not be the most effective way to resolve the problematic development charge situation.

The virtue of the proposal is that it takes advantage of political options available at the municipal level to establish a working environment whereby the City is relieved of the *immediate* pressures (notwithstanding the three million dollar tab already rung up around Polo Park) regarding infrastructure and commercial developments in industrial areas, giving it space to formulate more fundamental changes to regulations and organization that will allow it to achieve its goals for the Winnipeg metropolitan area. The obvious solution to the DC problem is to remove exaction authority from the rezoning process en-

tirely and associate it with the granting of *building permits*, since it is the zoning code that makes it so ineffective. This arrangement exists in municipalities in Alberta and British Columbia, and there is evidence to suggest that it is supported by both developers and municipal officials there.¹² The proposed amendment would give the city the regulatory teeth to manage immediate challenges while working for more fundamental change. ▀

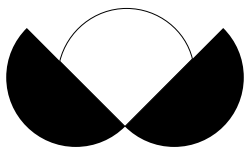
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Notes

- 1 Torpey interview, 12 July 2002.
- 2 Torpey interview, 12 July 2002.
- 3 Finnigan et al interview, 26 June 2002.
- 4 *Strategic Infrastructure Reinvestment Policy Task Force Report & Recommendations* (1998) points out that the "City of Winnipeg Act requires the City to maintain and repair streets. Further deterioration may expose the City to potential liability." Ostensibly this would hold for providing the municipality with a transportation network capable of safely accommodating average levels of traffic. Strategic Infrastructure Reinvestment Policy Task Force, *Strategic Infrastructure Reinvestment Policy Task Force Report & Recommendations* (City of Winnipeg, 1998), p. 39.
- 5 Table 810 (1) Part VIII "Industrial Districts," Winnipeg Zoning By-Law 6400/94; identification of "big box" outlet located on site zoned "M2" – Citizen's Information Service.
- 6 Thorgrimson interview, 22 July 2002; Table 810 (1) Part VIII "Industrial Districts," Winnipeg Zoning By-Law 6400/94.
- 7 Thorgrimson interview, 22 July 2002.
- 8 Stantec Consulting Ltd., "Executive Summary," in *Polo Park Area Study: Transportation Improvement and Development Review* (Stantec Consulting Ltd., 2001), pp. 2-5.
- 9 Article 800 (6), Part VIII "Industrial Districts," Winnipeg Zoning By-Law 6400/94.
- 10 This in fact was suggested in the Polo Park study as a way to ensure that financial and infrastructure situations similar to that of Polo Park do not occur in the future. However, the study only recommended that commercial uses be removed from industrial subcategories in the zoning code. While this would alleviate part of the problem, it would not remedy the general permissiveness of the zoning code that is negatively affecting the City's ability to levy servicing conditions. Stantec Consulting Ltd., p. 6.
- 11 Thorgrimson Interview, 22 July 2002.
- 12 Stantec Consulting Ltd., p. 9.

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